No. 373.

NOV 12 1900

JAMES H. McKENNEY, Clerk.

Motion for Advancement.

Filed Nov. 12, 1900.

Supreme Court of the United States

OCTOBER TERM, 1900.

[redacted] WATER COMPANY, Plaintiff in Error,

vs.

CITY OF [redacted]LE, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

MOTION TO ADVANCE.

[redacted]

[redacted]

In the Supreme Court of the United States.

DANVILLE WATER COMPANY, ... *Plaintiff in Error*,

vs.

THE CITY OF DANVILLE, ... *Defendant in Error.*

To the Defendant in Error:

Notice is hereby given to the City of Danville, defendant in error, that on Monday, November 12, 1900, the Danville Water Company, plaintiff in error, will make a motion in the Supreme Court of the United States, in Washington, D. C., at the opening of said Court on said date, to advance to such early day as the Court may think proper said case for argument orally and submission thereon, or submission on briefs, as the Court deems proper and advisable.

A. P. HUMPHREY, AND
BINGHAM & DAVIES,
Attorneys for Plaintiff in Error.

DANVILLE, ILL., Nov. 7, 1900.

I have this day received a copy of the above notice.

M. B. BAILEY,
Mayor of said City of Danville.
J. H. LEWMAN,
Attorney of said City of Danville.

No._____

Supreme Court of the United States.

OCTOBER TERM, 1900.

DANVILLE WATER COMPANY, . . . *Plaintiff in Error,*

vs.

CITY OF DANVILLE, ... *Defendant in Error.*

MOTION TO ADVANCE.

The Danville Water Company, plaintiff in error, claims that it established its plant in or near the city of Danville, Ills., under an ordinance of the City of Danville by which a right was given to it to use the streets of the city for laying mains and pipes, and by which it came under obligation to furnish water to the City and its citizens, and the City came under obligation to pay a certain price for each fire hydrant.

Some years after the passage of this ordinance and the completion of the plant, the City of Danville undertook, by ordinance, to reduce the rates for its use of such fire hydrants. The plaintiff in error, refusing to accede to the terms of this ordinance, and the City declining to pay anything, the plaintiff in error brought suit against the City of Danville for two quarterly payments.

The City interposed the new ordinance as a partial defense. Demurrers were sustained by the Circuit Court of Vermilion County, in which the suit was pending, to these pleas. The case was taken by the City of Danville to the

Supreme Court of Illinois, where it was reversed. That Court held that the City of Danville had the right to pass the ordinance reducing the rates for water, and that there had been no violation of a contract in so doing, nor any taking of private property for public use.

The case is reported under the name of the City of Danville vs. Danville Water Company, 178 Ill., 299, and 180 Ill., 235.

The judgment of the Circuit Court was reversed and the case remanded to the Circuit Court for proceedings in conformity to the opinion.

Upon the case being remanded and re-docketed, the Circuit Court, in obedience to this mandate, overruled the demurrers to the pleas, and the plaintiff in error had judgment only for the reduced rate. It thereupon prosecuted an appeal to the Supreme Court of Illinois, and the judgment was affirmed. It at once took a writ of error to this Court. The case was docketed for this term, but will not be reached on the calendar for some time.

In the meantime there has been argued in this Court, on October 31, case No. 56, Rogers Park Water Company vs. Fergus, and on October 29, 1900, case No. 348, Freeport Water Company vs. City of Freeport, was advanced for submission with No. 56, with leave to counsel for defendant in error to file brief on or before November 20th.

Counsel for the Danville Water Company are anxious to be heard upon the questions that will be presented in the consideration of these cases.

The case of the Danville Water Company differs from No. 56—the Rogers Park case—in that No. 56 involves the question whether there was a binding contract in favor of the Water Company to charge the rates prescribed in the original ordinance to private consumers, there being no question, as

we understand it, in that case as to whether the municipality had the right to subsequently change the amount to be paid by the municipality itself for water furnished to it.

The case of the Danville Water Company differs from that of the Freeport Water Company, No. 348, in that the grant to the Freeport Water Company was exclusive in its character. And we understand that it is contended by the defendant in error in that case that this renders the contract void as beyond the power of the municipality. The grant in the Danville Water Company case is not exclusive and there is no such question.

Not having heard the argument in the Rogers Park case we are unable to say whether counsel presented the question as to the right of the Water Company where the rates agreed to be paid by the municipality were in controversy, and assume that the argument was addressed to the other question—the only one in that case—as to whether there was a right to change the rates payable by private consumers.

No. 348 was not argued, but, as above stated, was submitted on brief.

It is respectfully submitted that the question in the case of the Danville Water Company as to the inviolability of its contract with the City of Danville, by subsequent municipal regulation, is of such importance that it deserves an oral discussion at the bar of this Court.

Counsel have been in no way wanting in diligence in bringing the case here, the delay since its decision by the Supreme Court of Illinois, as reported in the 178 and 180 of Illinois Reports, being rendered necessary by the fact that no final order could be then entered, but the case had to go back again to the Circuit Court and again come to the Supreme Court of Illinois. As soon as a final order was made in the Supreme Court of Illinois the case was brought here.

Counsel are anxious to present these matters, as they are of supreme importance to the plaintiff in error, and as it is believed that they can be better discussed at an oral hearing than by printed brief.

The Danville Water Company would therefore respectfully ask the Court to advance this cause to some date in the near future, when it may be argued orally, or, if the Court should not be inclined to grant this motion, then it would ask the Court to advance the cause to be submitted with No. 56 and No. 348, with such time as the Court may find convenient to allow both sides to present written argument.

Respectfully submitted,

WILLIAM W. DAVIES,

ALEX. POPE HUMPHREY,

For Plaintiff in Error.